BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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| In the Matter of | ) | |
| | ) | |
| Connecticut Department of Public | ) | RM No. 9258 |
| Utility Control Files Petition for | ) | DA 98-743 |
| Rulemaking | ) | |

**COMMENTS OF THE CELLUAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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**SUMMARY**

The Commission has previously recognized the significance of non-discriminatory numbering administration and has determined that such policies are crucial for further competition between wireless and wireline service providers. Since the Commission's Orders in 1995 and 1996, nothing has changed which would warrant the dramatic shift in policy requested by the Connecticut Department of Public Utility Control. Although the Commission has placed the burden upon the Petitioner to justify its discriminatory numbering policy, in this instance the Petitioner has proffered no support which would warrant a Commission retreat from its well reasoned policy.

The Petitioner's request to implement a wireless-only overlay code would place an unduly burdensome obligation on subscribers of wireless services. Penalizing wireless carriers and their subscribers in this manner is especially ironic when one considers that wireless carriers distribute telephone numbers more efficiently than wireline carriers. The Petitioner has founded its argument on the notion that because interservice competition is not prevalent today, there is no reason to preserve the existing framework for future competition. This rationale is not only short-sighted, but will dictate its own conclusion. By continuing to enforce forward-looking numbering policies which prohibit undue discrimination based on service offerings, the Commission is ensuring that carriers offering comparable services can maintain the capability to compete with one another.

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**COMMENTS OF**
**THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")[1] submits its Comments in the above-captioned proceeding.[2]

## I. INTRODUCTION

Numbering administration is one of the most important areas where the Commission must act to secure further competition in the telecommunications industry. Both Congress and the Commission have recognized the significance of telephone numbers to all carriers and the need to manage their distribution in a non-discriminatory and pro-competitive manner. In Section 251 Congress gave the Commission plenary jurisdiction over the

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited, RM No. 9258, DA 98-743 (released April 17, 1998).

management of telephone numbers throughout the nation[3] and required the Commission to guarantee the fair distribution of numbers among all telecommunications carriers.[4] CTIA supports the Commission's efforts to continue the efficient and impartial distribution of telephone numbers.

The expressed desire of the State of Connecticut[5] to discriminate between wireless and wireline service providers by creating wireless-only area codes, however, is contrary to the principles expressed in the Telecommunications Act of 1996 and incompatible with the Commission's previous determinations on this matter. Without any substantive demonstration to support its request, the Petition seeks reconsideration of the Commission's 1995 decision to prohibit discriminatory numbering administration. The Commission should act decisively in this proceeding and once again prohibit numbering plans which discriminate against CMRS providers, or any other industry sector. The Commission must uphold Congress' mandate that access to telephone numbers not be used as an anti-competitive tool in an increasingly competitive environment.

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3 47 U.S.C. § 251(e)(1) ("The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.")

4 47 U.S.C. § 251(e)(1) ("The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.") (emphasis added)

5 Petition of the Connecticut Department of Public Utility Control for Amendment to Rulemaking (filed March 30, 1998) ("Petition").

The request to implement wireless-only overlay codes places an unduly burdensome obligation on subscribers to wireless services. Were the Commission to grant the Petition, all wireless subscribers in Connecticut would be required to return their handsets to their service providers and have them reprogrammed with new area codes.[6] Such a requirement would penalize wireless carriers and their subscribers, and in the process damage the competitive potential of wireless carriers. It also would be ironic, because wireless service providers distribute telephone numbers more efficiently than wireline carriers.

## II. WIRELESS-ONLY AREA CODE OVERLAYS WILL RESTRAIN COMPETITION BETWEEN WIRELESS AND WIRELINE SERVICE PROVIDERS.

### A. The Commission Has Correctly Concluded That Service Specific Numbering Administration Is Inconsistent With Meeting Its Regulatory Objectives.

The Commission's broad authority to prevent telephone numbers from being distributed in an anti-competitive fashion is well established in the Communications Act. In 1995 the Commission recognized the competitive significance of non-discriminatory numbering administration when it rejected an Ameritech numbering administration proposal identical to the Petition. The Commission reasoned that Ameritech's proposal to exclude consumers of wireless services from an existing NPA and to segregate them into a separate NPA "would confer significant

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[6] When area code overlays or splits are implemented in geographic areas, reprogramming is conducted at the network level and does not require the consumer to take any steps to accommodate the change.

competitive advantages on the wireline companies in competition with paging and cellular companies, and, in particular, Ameritech itself."[7] In addition, the Commission balanced the disadvantages that wireless carriers would have faced with the need for numbering relief and concluded that "Ameritech has not shown that other plans that do not have unreasonably discriminatory impacts could not also equally meet the needs for additional numbering resources."[8]

Similarly, the Petition fails to balance the burdens placed upon wireless subscribers[9] with less onerous solutions such as area code splits and overlays that affect all consumers and carriers similarly. When, as here, there is an opportunity to realize efficient allocation of numbering resources through non-discriminatory means, the Commission should continue to prohibit the discriminatory numbering policies promoted in the Petition.[10]

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7 Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596 at ¶ 27 (1995) ("Ameritech Order").

8 Id. at ¶ 28.

9 See Id. at ¶ 27 ("[P]aging and cellular companies would be placed at a distinct disadvantage . . . because their customers would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new number.")

10 CTIA understands that certain numbering administration policies may have different effects on different carriers. However, the Commission should prohibit the adoption of plans which are designed to disadvantage any class of carriers, especially when a competitively neutral result is readily achievable.

Since the Ameritech Order, the Commission has had the opportunity to revisit its decision and has reaffirmed the importance of administering telephone numbers in a non-discriminatory fashion. Specifically, the Commission established that "numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another."[11] In the instant case, the Petition has failed to meet these standards. The Connecticut numbering proposal will unnecessarily favor wireline carriers by permitting them to retain numbers in existing area codes while all consumers of wireless services will be required to change their telephone numbers. The conclusory justification for such a proposal does not justify a departure from the Commission's reasoned decision making.

In these decisions, the Commission established the overriding principle which should continue to govern numbering administration in every State -- impartial assignment of telephone numbers is a prerequisite to competition.[12] Without

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11 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et. al., Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, 11 FCC Rcd 19392 at ¶ 281 (released August 8, 1996) ("Second Report and Order").

12 See Ameritech Order at ¶ 29 ("[s]uccessful administration of the NANP should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry

any inquiry into the Commission's reasoning, and only the conclusion that it "has developed sufficient experience to determine which policies will promote telecommunications competition and which policies will not," the Petitioner "respectfully disagrees with the FCC" that discriminatory numbering administration could result in a deterioration of competitive forces in the market.[13] The Petitioner also contends that its citizenry favors wireless-only area codes.[14] Such broad-based conclusions do not adequately form the basis upon which the Commission should deviate from its established, well reasoned policies.[15] Moreover, granting the Petition would mostly serve to prove the Petitioner's contention. Inter-service competition may not be prevalent today, but the Commission and others recognize its ability to develop. However, with

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segment or technology and by making numbering resources available on an efficient, timely basis. We believe that the assignment of numbers based on whether the carrier provides wireless service is not consistent with these objectives and could hinder the growth and provision of new beneficial services to consumers.") (emphasis added)

13 Petition at 8, 7.

14 Petition at 6. The Commission has previously addressed the concerns noted by Petitioner when it concluded that "[a]s competition in telecommunications services takes root, consumers will become more accustomed to ten-digit dialing and to area code overlays and the States will face less resistance in their efforts to implement new area codes than they will in the near term." Second Report and Order at ¶ 283.

15 See generally Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, 852 (D.C. Cir. 1970)("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed. . . .")

discriminatory numbering administration this competition is less likely to be realized.

### B. Competition Among Different Services Will Only Be Realized Over Time, Once All Of The Commission's Pro-Competitive Policies Have Had An Opportunity To Take Hold.

In support of its decision to ignore the anti-competitive effects of a discriminatory numbering policy, the Petition argues that there is no existing competition between wireless and wireline service providers, thus, discrimination will have no effect on competition.[16] Simply stated, the Petitioner contends that because carriers may not be competing presently, there is no reason to preserve the existing framework for future competition. This rationale is not only short-sighted, but will dictate its own conclusion that competition between wireless and wireline carriers is inconsequential. While such a result may prove the Petitioner's circular logic, it is not the policy goal the Commission should strive to promote.[17] CTIA and its members support the efficient allocation of depleting number resources. Mechanisms which expressly exclude wireless carriers, however, unduly burden their ability to offer service and to one day compete with wireline carriers.

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[16] Petition at 8.

[17] Extending the Petitioner's reasoning to its logical conclusion, States would also be permitted to implement numbering policies which discriminate against ISPs or even against CLECs which have not demonstrated that they are currently competing with the incumbent carrier. In other words, if a service provider is not competing with the incumbent at the time the State determines there is a numbering crisis, the State would be permitted to implement a discriminatory numbering policy.

Forward-looking numbering policies which prohibit undue discrimination based on service offerings are aimed at achieving a market where carriers can compete regardless of the technology utilized. By continuing to enforce such policies, the Commission is ensuring that carriers offering comparable services can maintain the capability to compete with one another. With regards to the wireless industry, the Commission has properly established a procompetitive framework. While consumers in many areas may not be presently substituting their existing service for that of a wireless carrier, it seems clear that any final determination as to their status as competitors is entirely premature. The Commission has recognized as much when it concluded that

> [w]ireless services do not yet approach the ubiquity of wireline telephone service, but there are a number of trends apparent in the increased use of wireless telephony that may point to the eventual use of wireless telephony as not just a supplementary communications tool to traditional wireline telephone service but as a substitute for such service.[18]

It is clear that not only is it too soon to score the official tally of competition between wireless and wireline carriers, but that any inquiry into the matter must be undertaken with caution. Generalized statements in the Petition concerning substitutability of service ignore the mechanics of the

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[18] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, 12 FCC Rcd 11266 at 11270 (1997).

marketplace.[19] Competition is a matter of degree, not subject to a binary -- on or off -- determination. The Commission has taken many steps, including the licensing of new services, the establishment of disaggregation polices, and the promotion of non-discriminatory numbering administration, which, when working in concert, will likely result in greater competition over time. That being said, over the last several years, it is undeniable that the level of wireless competition has increased dramatically. As prices continue to fall,[20] and wireless carriers continue to position themselves in the same market as wireline carriers,[21] it seems likely that competition between different service providers will continue to develop.

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19 Petition at 9 ("In [Petitioner's] opinion, substitutability is synonymous with competition. Absent substitutability, there is no competition further supporting [Petitioner's] belief that competition between the two industries simply does not exist.")

20 Jason Meyers and Nancy Gohring, *New Opportunities Amid Old Debates: Wireless '98 Leaders Battle Landline, Wrestle with Data*, Telephony, Mar. 2, 1998 ("Lowell McAdam, president and CEO of PrimeCo Personal Communications, was confident that wireless service PCS in particular would wrangle usage away from wireline competitors, partly because of falling prices. In 1996, before PCS was introduced, wireless held a 13-to-1 premium over wireline, but by the end of 1997, that premium had fallen to 4.8.")

21 See *Wisconsin Firm Becomes Pioneer as it Replaces its PBX with PCS*, TR Wireless News, Mar. 19, 1998 ("Lindquist Machine Corp. of Green Bay and Neenah, Wis., appears to have become the first substantial U.S. corporation to shun wireline service and deploy a nearly all-wireless PCS . . . phone system. . . . In recent months a growing but still very small cadre of consumers and a smattering of very small companies . . . have switched to all-wireless communications.")

## III. CMRS PROVIDERS UTILIZE THEIR ALLOCATION OF TELEPHONE NUMBERS MORE EFFICIENTLY THAN WIRELINE CARRIERS.

The Petitioner's request to impose the burdens of number exhaust on the shoulders of wireless subscribers may lead some to infer that the proliferation of wireless usage is the cause of number depletion. In fact, an examination into the manner in which numbers are distributed among carriers within a geographic area reveals that wireless carriers are the most efficient users of telephone numbers. Though CTIA has consistently supported numbering relief plans which affect all consumers and carriers equally, it seems ironic to impose all of the burdens on the subscribers of the carriers which most efficiently utilize their numbering resources.

Pursuant to regulatory mandate and historical wireline network configuration, each NXX code within an NPA is assigned to a particular rate center.[22] Every wireline carrier, including any new entrant,[23] which intends to provide service within that area must have its own NXX code associated with that rate center. Thus, under the present arrangements, each carrier will control one NXX code with 10,000 telephone numbers assigned to it,

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22 See North American Numbering Council Local Number Portability Administration Working Group Wireless-Wireline Service Provider Portability Rate Center Discussion, February 27, 1998 (submitted as condensed attachment in *Letter from Alan C. Hasselwander, Chairman, North American Numbering Council to A. Richard Metzger Jr., Chief, Common Carrier Bureau* (March 12, 1998) ("NANC Working Group Discussion").

23 Id. at 1.3 ("In order to maintain rate center integrity and avoid consumer confusion, in most areas CLECs will need a minimum of one NXX for each rate center within their planned service area.")

regardless of the number of subscribers it may have residing in that rate center.[24] If a carrier has only several hundred subscribers, over 9,000 numbers may remain unassigned and stranded.[25]

Wireless carriers, on the other hand, distribute numbers within a particular NXX code over a much broader area without limitation to the geographic location of the subscriber.[26] This advantageous network configuration results in fewer NXX codes being dedicated to a particular geographic area and thus limits the possibility of stranded numbers.[27] As a result, the true problem of stranded or unused telephone numbers is less likely to

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[24] The problem of stranding unused numbers not only affects new entrants, but is also prevalent in rural areas with few potential subscribers. Stranded telephone numbers exist anywhere an NXX code assigned to a particular rate center is not optimally utilized.

[25] Even under a number pooling regime, every one of these numbers can remain stranded with its assigned carrier if each of the ten NXX-X codes has been opened. In other words, a carrier with only ten subscribers in a given rate center could defeat any objective of number pooling by assigning one telephone number in each NXX-X code. This opening of the NXX-X code makes pooling of that code impossible under current models.

[26] See id. at 1.7 ("[O]nce NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber.")

[27] See id. at 1.8 ("[For wireless carriers] [t]he customers physical, residential, business, or billing location is not a necessary requirement in determining which numbers are assigned. Rather, factors such as originating or terminating calling scopes in relationship to wireline networks may be a determining factor.")(emphasis added) Many limitations on the efficient usage of telephone numbers by wireless carriers are likely the result of regulatory or wireline mandates requiring the wireless network to conform to a more inefficient configuration.

be caused by a wireless carrier. Furthermore, wireless service providers generally are not accused of, nor do they, stockpile depleting number resources in a particular community.

In light of these facts, it should not be a surprise that the Petitioner has failed to adequately demonstrate the advantage of a wireless only area code overlay. In the Ameritech Order the Commission placed the duty to justify a discriminatory numbering proposal on the party seeking to implement it.[28] The Petitioner has not offered any support which would warrant the implementation of a discriminatory policy, nor has it provided any indication as to the level of anticipated relief. As more CLECs are certified in the State to offer local exchange service (Petitioner claims to have certified at least forty carriers for the provision of service),[29] there are no assurances that a wireless only overlay code will resolve the Petitioner's asserted exhaust problem. In fact, as noted above, it seems likely that such a solution would have little long-term benefit. The Commission would be prudent to require a higher standard on the part of a petitioner before it would be permitted to expressly discriminate among telecommunications carriers.

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[28] Ameritech Order at ¶ 28 ("Ameritech has not shown that other plans that do not have unreasonably discriminatory impacts could not also equally meet the needs for additional numbering resources.")

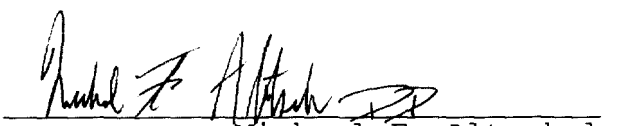
[29] Petition at 7-8.

## IV. CONCLUSION

For these reasons CTIA respectfully requests that the Commission reject Connecticut's proposal to implement a wireless-only area code overlay which would discriminate between wireless and wireline service providers.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**



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**CERTIFICATE OF SERVICE**

I, Ann Fisher-Durrah, hereby certify that a copy of the foregoing Comments of The Cellular Telecommunications Industry Association was delivered by hand upon the following:

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